



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: VICKI SIMMONS
Regulatory Coordinator
Virginia Department of Medical Assistance Services

FROM: USHA KODURU
Assistant Attorney General

DATE: October 8, 2004

**SUBJECT: Proposed regulation concerning NICU/DSH and Indirect Medical Education;
Freeze Freestanding Psychiatric Rates**

I am in receipt of the attached proposed regulation to eliminate a Disproportionate Share (DSH) payment calculation for Medicaid-recognized Neonatal Intensive Care Unit (NICU) programs and to modify indirect medical education payments. This regulation also proposes to exclude freestanding psychiatric hospitals from the standard re-basing action conducted for other types of hospitals' reimbursement. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services ("DMAS") has the legal authority to promulgate the proposed regulation and if the proposed regulation comports with state and federal law.

Based on my review, pursuant to Item 326(OO) and Item 326(NN) of the 2004 Appropriation Act, DMAS has the authority to promulgate these amendments. Item 326(OO) is necessary to be consistent with federal approval of the methodology change.

The authority for this proposed regulation derives from Virginia Code §§ 32.1-324; 325 which grants to the Board of Medical Assistance Services the authority to administer and amend the

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plan for Medical Assistance and authorizes the Director of DMAS to administer and amend the plan for Medical Assistance according to the Board's requirements.

Because these regulations will amend the State plan, CMS approval will also be required.

If you have any questions, please contact me at 225-2741.